

# Union Calendar No. 382

110TH CONGRESS  
2D SESSION

# H. R. 5579

[Report No. 110-615]

To remove an impediment to troubled debt restructuring on the part of holders of residential mortgage loans, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. CASTLE (for himself and Mr. KANJORSKI) introduced the following bill;  
which was referred to the Committee on Financial Services

MAY 1, 2008

Additional sponsor: Mr. SHERMAN

MAY 1, 2008

Reported with an amendment, committed to the Committee of the Whole  
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on March 11, 2008]

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## A BILL

To remove an impediment to troubled debt restructuring  
on the part of holders of residential mortgage loans,  
and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Emergency Mortgage*  
3 *Loan Modification Act of 2008”.*

4 **SEC. 2. SAFE HARBOR FOR QUALIFIED LOAN MODIFICA-**  
5 **TIONS OR WORKOUT PLANS FOR CERTAIN**  
6 **RESIDENTIAL MORTGAGE LOANS.**

7       (a) *STANDARD FOR LOAN MODIFICATIONS OR WORK-*  
8 *OUT PLANS.*—*Absent contractual provisions to the con-*  
9 *trary—*

10           (1) *the duty to maximize, or to not adversely af-*  
11 *fect, the recovery of total proceeds from pooled resi-*  
12 *dential mortgage loans is owed by a servicer of such*  
13 *pooled loans to the securitization vehicle for the ben-*  
14 *efit of all investors and holders of beneficial interests*  
15 *in the pooled loans, in the aggregate, and not to any*  
16 *individual party or group of parties; and*

17           (2) *a servicer of pooled residential mortgage*  
18 *loans shall be deemed to be acting on behalf of the*  
19 *securitization vehicle in the best interest of all inves-*  
20 *tors and holders of beneficial interests in the pooled*  
21 *loans, in the aggregate, if for a loan that is in pay-*  
22 *ment default under the loan agreement or for which*  
23 *payment default is imminent or reasonably foresee-*  
24 *able, the loan servicer makes reasonable and docu-*  
25 *mented efforts to implement a modification or work-*  
26 *out plan or, if such efforts are unsuccessful or such*

1        *plan would be infeasible, engages in other loss mitiga-*  
2        *tion, including accepting a short payment or partial*  
3        *discharge of principal, or agreeing to a short sale of*  
4        *the property, to the extent that the servicer reasonably*  
5        *believes the particular modification or workout plan*  
6        *or other mitigation actions will maximize the net*  
7        *present value to be realized on the loan, including*  
8        *over that which would be realized through foreclosure.*

9        *(b) SAFE HARBOR.—Absent contractual provisions to*  
10       *the contrary, a servicer of a residential mortgage loan that*  
11       *acts in a manner consistent with the duty set forth in sub-*  
12       *section (a), shall not be liable for entering into a qualified*  
13       *loan modification or workout plan, to—*

14                *(1) any person, based on that person’s ownership*  
15        *of a residential mortgage loan or any interest in a*  
16        *pool of residential mortgage loans or in securities that*  
17        *distribute payments out of the principal, interest and*  
18        *other payments in loans on the pool;*

19                *(2) any person who is obligated pursuant to a*  
20        *derivatives instrument to make payments determined*  
21        *in reference to any loan or any interest referred to in*  
22        *paragraph (1); or*

23                *(3) any person that insures any loan or any in-*  
24        *terest referred to in paragraph (1) under any law or*  
25        *regulation of the United States or any law or regula-*

1        *tion of any State or political subdivision of any*  
2        *State.*

3        (c) *RULE OF CONSTRUCTION.*—*No provision of this*  
4        *section shall be construed as limiting the ability of a*  
5        *servicer to enter into loan modifications or workout plans*  
6        *other than qualified loan modification or workout plans.*

7        (d) *DEFINITIONS.*—*For purposes of this section, the*  
8        *following definitions shall apply:*

9                (1) *QUALIFIED LOAN MODIFICATION OR WORK-*  
10        *OUT PLAN.*—*The term “qualified loan modification or*  
11        *workout plan” means a modification or plan that—*

12                (A) *is scheduled to remain in place until*  
13                *the borrower sells or refinances the property, or*  
14                *for at least 5 years from the date of adoption of*  
15                *the plan, whichever is sooner;*

16                (B) *does not provide for a repayment sched-*  
17                *ule that results in negative amortization at any*  
18                *time; and*

19                (C) *does not require the borrower to pay ad-*  
20                *ditional points and fees.*

21                (2) *NEGATIVE AMORTIZATION.*—*For purposes of*  
22        *paragraph (1), the term “negative amortization” does*  
23        *not include the capitalization of delinquent interest*  
24        *and arrearages.*

1           (3) *RESIDENTIAL MORTGAGE LOAN DEFINED.*—

2           *The term “residential mortgage loan” means a loan*  
3           *that is secured by a lien on an owner-occupied resi-*  
4           *dential dwelling.*

5           (4) *SECURITIZATION VEHICLE.*—*The term*  
6           *“securitization vehicle” means a trust, corporation,*  
7           *partnership, limited liability entity, special purpose*  
8           *entity, or other structure that—*

9                     *(A) is the issuer, or is created by the issuer,*  
10                    *of mortgage pass-through certificates, participa-*  
11                    *tion certificates, mortgage-backed securities, or*  
12                    *other similar securities backed by a pool of assets*  
13                    *that includes residential mortgage loans; and*

14                    *(B) holds such loans.*

15           (e) *EFFECTIVE PERIOD.*—*This section shall apply only*  
16           *with respect to qualified loan modification or workout plans*  
17           *initiated prior to January 1, 2011.*

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